IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

OP.No. 16725 of 1998(N)

PETITIONERS:
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1. **T.V.SUBRAMANYAN, T.C. 37/270, SIVANCOIL STREET, FORT, THIRUVANANTHAPURAM (FORMERLY RESIDING AT VANIVILAKATHU VEEDU, EDAGRAMOM, KARUMOM P.O., THIRUVANANTHAPURAM.**

2. **R.PUSHPAVATHY, T.C. 43/467, CHEMBRAMPUTHUR HOUSE, SREEVARAHAM, MANACAUD, P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS:
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1. **THE TRAVANCORE COCHIN COUNCIL OF MODERN MEDICIN,E REP.BY ITS REGISTRAR, RED CROSS ROAD, THIRUVANANTHAPURAM.**

2. **THE TRAVANCORE COCHIN COUNCIL OF INDIGENOUS MEDICINE, REP.BY ITS REGISTRAR , RED CROSS ROAD, THIRUVANANTHAPURAM-37.**

3. **THE TRAVANCORE COCHIN COUNCIL OF HOMEOPATHIC MEDICINE, REP.BY ITS REGISTRAR, RED CROSS ROAD, THIRUVANANTHAPURAM 37.**

4. **THE KERALA NURSES & MIDWIVES COUNCIL, REP.BY ITS REGISTRAR, RED CROSS ROAD, THIRUVANANTHAPURAM 37.**

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5. THE STAFF SELECTION BOARD OF THE T.C.M.C. AND K.N.M.C.., REP.BY ITS REGISTRAR, RED CROSS ROAD, THIRUVANANTHAPURAM.

6. SRI.P.K.GOPINATHAN NAIR, REGISTRAR, T.C.M.C. & K.N.M.C., OFFICE OF THE TCMC & KNMC.

7. SMT.S.PRABHAKUMARI, U.D.CLERK, T.C.M.C. & KNMC., RED CROSS ROAD, THIRUVANANTHAPURAM 37.

8. STATE OF KERALA, REP.BY ITS SECRETARY TO GOVERNMENT, HEALTH DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.P.N.SANTHOSH
SRI.K.M.STALIN
SRI.N.SUGATHAN
SRI.A.V.RAMAKRISHNA PANICKER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/10/2007, ALONG WITH OP NO. 16017 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.16725/1998.

ORDER ON 2847/1999, 29685/98 IN OP. NO.16725/1998

DISMISSED

17.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PAGES OF MINUTES.

EXT.P2:- COPY OF THE RELEVANT PAGES OF RESOLUTION MINUTES.

EXT.P3:- COPY OF THE MINUTES OF THE MEETING OF THE STAFF SELECTION BOARD.

EXT.P4:- COPY OF THE ORDER NO.A0726/90/MC DT. 26.11.90.

EXT.P5:- COPY OF THE RELEVANT EXTRACT OF THE MINUTES.

EXT.P6:- COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER DT. 1.2.97.

EXT.P7:- COPY OF THE RELEVANT EXTRACT OF THE MINUTES.

EXT.P8:- COPY OF THE RELEVANT EXTRACT OF THE MEETING.

EXT.P9:- COPY OF THE MINUTES OF THE MEETING OF THE STAFF SELECTION BOARD DT. 1.3.97.

EXT.P10:- COPY OF THE ORDER NO.A-233/97/MC DT. 13.1997.

EXT.P11:- COPY OF THE ORDER NO.A 178/95 MC. DT. 3.7.95.

EXT.P12:- COPY OF THE ORDER NO. A 437/98/MC DT. 18.3.98.

RESPONDENTS EXHIBITS

EXT.R1 IRNOA 252/95 MC DT. 6.3.95.

EXT.R2:- GOVERNMENT LETTER NO.12309/G2/05 H & FWDC/ DT. 24.7.96.

EXT.R3:- CIRCULR NO.8857/ADVC1/04/P&ARD DT. 17.1.96.

EXT.R7(a):- COPY OF THE MEMORANDUM NO.49739/D3/65/HLD DT. 27.7.65 OF THE GOVERNMENT.

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EXT.R7(b):- COPY OF THE ORDER NO.A.178/95/MC DT. 3.7.95 OF THE 4TH RESPONDENT.

EXT.R7(c):- COPY OF THE ORDER NO.A 178/95/MC DT. 1.1.96 OF THE 4TH RESPONDENT.

EXT.R7(d):- COPY OF THE ORDER NO. A 437/98/MC DT. 10.3.98 OF THE 4TH RESPONDENT.

EXT.R7(e):- COPY OF THE ORDER NO.A1 216/99/MC DT. 1.3.99 OF THE 4TH RESPONDENT.

EXT.R7(f):- COPY OF THE LETTER NO.12309/G2/95/H&FWD DT. 24.7.96 OF THE GOVERNMENT.

EXT.R7(g):- COPY OF THE MINUTES OF JOINT MEETING OF THE MEDICAL COUNCILS HELD ON 5.4.2000.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.Nos.16725/1998-N & 16017/2000-F

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Dated this the 17th day of October, 2007.

JUDGMENT

1. The petitioner in O.P.16017/2000 is the 7th respondent in O.P.16725/1998. The petitioners in both the writ petitions are employed in an office which has composite character of dealing with different institutions, namely, the Travancore-Cochin Council of Modern Medicine, the Travancore Cochin Council of Indigenous Medicine, the Travancore Cochin Council of Homoeopathic Medicine and the Kerala Nurses' & Midwives' Council.

2. The petitioners in O.P.16725/1998 were working as daily rated persons from some time in 1986. But the fact

remained that they were not recorded in terms of any of the regulations or other provisions which are statutory in nature. They were also not regularized at any point of time. Some time in 1995, the petitioner in O.P.16017/2000 was appointed, after advertising a vacancy by calling for candidates through the Employment Exchange. At that time, such recruitment could have been made only by treating the entire State as a unit and by requesting for lists of available persons from the different Employment Exchanges in the different districts in the State. But list was invited only from the Thiruvananthapuram district. The Government, ultimately, accepted that situation because, it was of the view that the appointment was made by drawing candidates through the Employment Exchange and the prescription that candidates from throughout the State ought to be drawn was not within the knowledge or reach of the Council at the relevant point of time. Thereafter, the Council regularized the temporary

appointment of the petitioner in O.P.16017/2000 with effect from 7-7-1995, the date of her joining service.

3. The fact remains that the Government had taken the stand that the regularization of the services of the petitioners in O.P.16725/1998 could be only from a later point of time and that any entitlement for such regularization cannot, in any manner, affect the seniority of the petitioner in O.P.16017/2000.

4. The facts stated above would show that the rival parties were employed from sources which were not authorized. Daily rated workers were retained for exceptionally long spells. At the same time, the initial recruitment of the petitioner in O.P.16017/2000 cannot also be treated as wholly in accordance with law because, though, out of ignorance, the Council had made the recruitment only from candidates in Thiruvananthapuram district. But the fact

remains that her appointment was regularized and the Government does not question that. The Council, in turn, has also taken the stand that the appointment of the petitioner in O.P.16017/2000 was also contrary to rules. But, as already noticed, the fact remains that her appointment was regularized.

In the aforesaid fact situation, at this distant point of time, all that is required is that it is declared that the petitioner in O.P.16017/2000 is to be treated as senior to the petitioners in O.P.16725/1998 and the benefit of the decision impugned in O.P.16017/2000 shall not inure to the benefit of the petitioners in O.P.16725/1998, in any manner, overriding the effect of Ext.P10 in O.P.16017/2000. The decision impugned in O.P.16017/2000 shall stand regulated by the aforesaid declaration which is granted hereby and to the extent it is contrary to what is stated herein is quashed.

O.P.16725/1998 is disposed of directing that the petitioners therein would be entitled to the benefit of Ext.P10 in O.P.16017/2000 and would be entitled to regularization with effect from 1-12-1995. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.Nos.16725/1998N & 16017/2000F

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JUDGMENT

Dated: 17th October, 2007.